IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9776 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KHEMABHAI LALLUBHAI RATHWA

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

1. Special Civil Application No. 9776 of 1999

MR YM THAKKAR for Petitioner No. 1

RULE SERVED for Respondent No. 1

MS RV ACHARYA for Respondent No. 2

MR VT ACHARYA for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 03/07/2001

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner has prayed for a writ of mandamus to direct the respondents to give three phase power connection at the petitioner's agricultural land

bearing Survey No.92 in Village Lilesara in Godhra Taluka of Panchmahals District pursuant to the petitioner's application made in the year 1990.

2. There is no dispute about the fact that the petitioner had submitted an application to the Gujarat Electricity Board, Godhra office for three phase electricity connection at the petitioner's agricultural land bearing Survey No.92 in the aforesaid village. The petitioner's grievance in this petition is that the respondents have not given any communication to the petitioner why the petitioner's application is not being granted even after passage of more than ten years.

3. In response to the notice issued by this Court, affidavit-in-reply is filed by Jr. Engineer of the respondent- Board stating that when the inspection squad of GEB had gone for surprise checking near agricultural land bearing Survey No.92 of the aforesaid village on 31-12-1994, a theft was detected and panchnama was drawn. There was a motor pump connected illegally on the well on the said land bearing Survey No.92 from an L.T. Pole. It was 300 mts. away from the agricultural land in question. A criminal case was also lodged being C.R. no.345/92 at Godhra Taluka Police Station. However, when the theft was detected, one Mr. Hussain Abdulla Shaikh was found on the land in question. The Board had, therefore, issued a supplementary bill to the tune of Rs.25,945-50 to said Hussain Abdulla Shaikh. Civil suit No.215/94 also came to be filed for recovering the said amount from Hussain Abdulla Shaikh in the Court of learned Civil Judge (S.D.) at Godhra. The said suit came to be dismissed on 11-7-1998 on the ground that Hussain Abdulla Shaikh was not the owner of the land bearing Survey No.92 but from the Village revenue record it transpired that petitioner Khemabhai Lallubhai Rathwa was the owner of the land in question.

4. At the hearing of this petition, Mr. Y.M. Thakkar, learned counsel for the petitioner has submitted that the petitioner had never committed any theft of electricity and that the petitioner has nothing to do with Hussain Abdulla Shaikh. It is submitted that the petition deserves to be allowed as the petitioner cannot be punished for the alleged theft committed by another person.

5. With regard to the query whether the Board has sent any communication to the petitioner, Ms. Acharya, learned counsel for the respondents points out that the Deputy Engineer (Dist), G.E. Board, Godhra (Rural) had

sent a letter dated 18-1-1995 to the petitioner stating that the petitioner's application dated 13-6-1990 cannot be considered until the petitioner pays the amount of Rs.25,945-50 as it was found that there was electricity theft by taking electricity for the well on the land bearing Survey No.200. A copy of the said letter is taken on record.

6. A bare perusal of the aforesaid letter indicates that theft had taken place for running a motor at the well in Survey No.200. Hence, the allegation made by the respondents that the theft had taken place for the purpose of running the motor in the well of the petitioner's land is not borne out. Even in the panchnama dated 31-12-1992, it is mentioned that an electric motor in the agricultural field was being run with the help of illegal connection taken from an LT line at a distance of about 300 mts. away from the well. Hence, even if the L.T. pole was near Survey No.92, it cannot be said that any alleged theft from the L.T. line near the said agricultural field was committed by the petitioner.

7. In view of the above, the entire basis of the demand being made by the respondents appears to be misconceived and hence the communication dated 18-1-1995 from the Deputy Engineer of the respondent- Board to the petitioner and consequential non-supply of electricity connection to the petitioner for Survey No.92 are declared as illegal and void-ab-initio.

8. In view of the above discussion, the petition is allowed. The respondents are directed to consider the petitioner's application for electricity supply without insisting for the demand of Rs.25,945-50 or without making any reference to the alleged theft from the L.T. Pole which was the subject matter of inspection on 31-12-1992. These directions may be carried out within a period of one month from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier. Rule is made absolute accordingly with no order as to costs.

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